

Land and Water Resources Council

December 8, 2005

Minutes of the Meeting

Members present: Martha Freeman, Chair, Director, State Planning Office (SPO); Paul Jacques (for Roland Martin, Commissioner of Inland Fisheries and Wildlife (DIFW)); T.J. Tavares, Department of Economic and Community Development; David Etnier (for George Lapointe, Commissioner of Marine Resources (DMR)); Clough Toppan, Maine Center for Disease Control (for John Nicholas, Commissioner of Health and Human Resources); and Kathy Fuller (for David Cole, Commissioner of Transportation)

Staff: Diane Kenty, Court Alternative Dispute Resolution Service; Don Witherill, DEP; Deirdre Gilbert, DMR; Sue Inches, SPO; Paula Thompson, SPO; and Todd Burrowes, SPO

Others: Karen Young, Casco Bay Estuary Program

I. Welcome & Introductions. Chair Martha Freeman welcomed those in attendance and opened the meeting.

II. Minutes. The Council unanimously approved the minutes of its September 8, 2005 meeting as drafted.

III. Casco Bay Estuary Program (CBEP). Karen Young briefed the Council on the status of the Program's revision and update of the Casco Bay Estuary Plan, the action plan that forms the foundation for and guides the Program's work. Ms. Young invited state agencies to review and comment on the draft plan by January 13, 2006. Ms. Young renewed her request that Council provide a letter of support for the plan when it is completed. Ms. Young explained that the plan revision focuses on adjustments within the Program's established framework and priorities. Ms. Young noted that the Program recently received a \$750,000 grant from EPA's Targeted Watershed Program to support its work in the Presumpscot River watershed. Following additional discussion, the Council generally agreed in concept to continue to work cooperatively with the CBEP and, subject to review of the final plan, provide a letter of support as requested.

IV. Bay Management. Deirdre Gilbert provided an update on the bay management study. With reference to written materials presented to the Council, Ms. Gilbert reviewed diagrams developed by staff to summarize and categorize issues and management solutions suggested at the initial round of public meetings and interim conclusions drawn by staff. Ms. Gilbert explained that these and related materials would be used to focus discussion at a subsequent public meeting with stakeholders designed to explore potential management options more fully. Ms. Gilbert also noted that these materials would be used in preparing the Council's interim report to the Legislature's Marine Resources Committee, due in January 2006. Ms. Gilbert further explained that staff has been

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reviewing information regarding approaches to bay management in other jurisdiction, such as Massachusetts' proposed ocean management legislation.

In discussing next steps in the study process, Sue Inches suggested consideration of whether resource management decisions are made at the appropriate level of government (local, state or federal). Ms. Gilbert noted that this consideration is an element of the study as reflected in the summary of issues and management options. Kathy Fuller suggested that the diagrams would be helpful in focusing discussion and accurately reflect the connection between land-based activities and management of near-shore areas. Karen Young noted the Casco Bay Estuary Program's continuing interest in involvement with the bay management study.

Following discussion, the Council unanimously agreed to use of the diagrams and related issue summaries for purposes of the study process, including the Council's interim report to the Marine Resources Committee.

V. Land Use Mediation Program; report. Diane Kenty provided background on the Council's draft report on the land use mediation program, due to January 15, 2006, pursuant to 5 MRSA §3331, sub-§4. Ms. Kenty explained that the program continues to be vastly underutilized, and that it handled no mediation matters in 2005. Ms. Kenty suggested that the lack of use of the program is attributable to a variety of factors, including lack of marketing and public awareness (the judicial branch does not advertise its services) and disinclination among municipalities, which make most land use decisions, to participate in the process. Ms. Kenty noted that under current law municipalites, unlike state agencies, may decline to participate in mediation requested pursuant to the program. Ms. Kenty noted that CADRES, which provides and administers a variety of alternative dispute resolution services, does maintain a roster of approved land use mediators.

The Council discussed the program and options to facilitate its use as appropriate. Paula Thompson, explaining that some municipalities may perceive that mediation under the program is inconsistent with municipal laws and procedures and thus precluded, suggested discussion of the issue with the Maine Municipal Association and consideration of publication an article in the Maine Townsman. Chair Martha Freeman noted that change in the law is likely necessary to make the program successful. Ms. Freeman noted that Maine's trial bar strongly opposed legislation, subsequently enacted, to require mediation of divorce matters. Ms. Kenty noted that there was comparable opposition to the change in court rules mandating alternative dispute resolution in connection with Superior Court matters.

The Council unanimously approved submission of the report on the land use mediation program as required by 5 MRSA §3331, sub-§4.

VI. Annual Report. Todd Burrowes presented and summarized the Council's draft annual report, due January 1, 2006. Following discussion, the Council unanimously agreed to submit the report as drafted, with the following additions: reference to

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development of a list of priority watersheds for DEP's non-point source pollution reduction and related programs as an issue for consideration in 2006; and language to reflect the Council's endorsement, for study planning purposes, of staff's interim findings and issue summary diagrams.

VII. Adjourn. There being no further business, the chair adjourned the meeting.